

No. 9(1)81-8Lab./5708.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Delhi Forgings and Stamping Pvt. Ltd., Sector 25, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA FARIDABAD

Reference No. 212 and 178 of 1979

between

THE WORKMEN AND THE MANAGEMENT OF M/S. DELHI FORGINGS AND STAMPINGS PRIVATE LIMITED, SECTOR-25 FARIDABAD.

Present :— Shri R.N. Roy for the workmen.
Shri K.P. Aggarwal for the management.

AWARD

By order No. FD/40-79/33860, dated 31st July, 1979, the Governor of Haryana referred the following dispute :—

Whether the workmen shown in Annexure "A" are entitled to reinstatement/re-employment ? If so, with what details ?

By order No. FRD/139-78/8297, dated 23rd February, 1979, the Governor of Haryana referred the following dispute :—

"Whether the lay off of all the 62 employees (annexure "A") who were in the service of the company on 26th September, 1978 was wrongful and illegal amounting to lock-out and victimisation ? If so, to what relief they are entitled."

between the management of M/s Delhi Forgings & Stampings (P) Ltd. Sector-25, Faridabad and its workmen, to this Tribunal, for adjudication in exercise of the powers conferred by clause(d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed in both the references on 20th November, 1979 which are as under in reference No. 212 of 1979 :—

1. Whether the Mercantile Employees Association has locus-standi to raise the dispute ?
2. Whether the management is estopped from objecting to locus standi of the said association ?
3. Whether the substantial number of workmen have espoused the demands forming the dispute ?
4. Whether S. Jagmohan Singh & Om Parkash Singh have received all their dues in full and final settlement ? If so, whether they are estopped from raising the dispute ?
5. Whether the workmen shown in annexure "A" are entitled to reinstatement or re-employment ? If so, with what details ?

and in reference No. 178 of 1979 issues are as under :—

1. Whether some of the workmen numbering 43 have received their dues in full and final settlement ? If so, whether they are estopped from raising the dispute ?
2. Whether the dispute is not an industrial dispute ?
3. Whether the dispute has been espoused by a substantial number of workmen ? If not, to what effect ?
4. Whether Mercantile Employees Association has not representative character ? If so, to what effect ?

Both the references were consolidated in reference number 212 of 1979,—*vide* my predecessor order, dated 20th November, 1979 and evidence was recorded in this reference. The workmen were called upon to adduce their evidence first and statements of Shri R.N. Roy, President Mercantile Employees Association, New Delhi as WW-1. Shri Kalap Nath, Shri Trilok Singh, Shri Hari Ram and Shri Adhya Tiwari all concerned workmen were recorded as WW-2 to WW-5 and Shri Hoob Lal, General Secretary of the Mercantile Employees Union appeared as WW-6 and closed their cases. On behalf of the management Shri N.K. Gupta, Director of the management appeared as MW-1 and closed their case. Arguments were heard. I now give my finding issue-wise :—

Issue No. 1 and 2 in reference No. 212 and issue No. 4 in reference No. 178 of 1979.—WW-1 stated that the workmen of Delhi Forging and Stampings Private Limited, Faridabad were members of this union. Ex. W-1 was the list of such members. MW-1 stated that there were 63 workmen in the factory in September, 1978. I find from Ex. W-1 that 63 workmen were members of the union. The representative for the management could not give any reason as to how a union having membership of all the workers could not have locus-standi in the matter. Therefore, these issues are decided against the management.

Issue No. 3 in reference No. 212 and issues No. 2 and 3 in reference No. 178 of 1979.—WW-1 stated that he entered into settlement,—*vide* Ex. W-9. He served a letter on the management as per the said agreement,—*vide* Ex. W-3. He drafted applications of workmen copies Ex. W-4 to W-28 for filing with the management. He served demand notice copy Ex. W-29. He also served another demand notice copy Ex. W-31 on the basis of complaints Ex. W-32 to W-52. In cross-examination he stated that there were 77 workers as per the settlement. He had a membership of 66 workers. He did not remember the dates of their enrolment. But they had become members long before their termination. He had brought only membership register commencing from membership number 7711. First enrolment according to it was dated 28th July, 1977. He further stated that no meeting of workmen or of general body was held for issuing the demand notice but the Executive Committee passed and approved the demand notice. The constitution of union was Ex. W-57. In cross-examination WW-3 stated that a meeting had taken place for raising the demand but he could not tell where and when it took place. He again told that it was held at the factory. There were 55 workmen present there. The proceedings were oral. WW-4 in cross-examination stated that the demand was raised in a meeting outside the factory but there was no writing at all. Above 40-45 workers might have attended the meeting. WW-6 stated that he had appeared in the conciliation proceedings on behalf of the workmen. Letter of authority and espousal was filed with the claim statement. Documents were given in original.

The representative for the management argued that the workmen failed to produce by any cogent evidence of a meeting of workmen, discussion of demand and passing the same by a resolution. On the other hand the learned representative for the workmen contended that the management did not raise such objections at the time of conciliation proceedings. Original letter of authority was given at that time. The representative for the management cited 1975 ILLJ page 293 in which it is held that "where a dispute is sponsored or espoused by a union of workmen, authority to do so must be proved material evidence, either a resolution or authorisation by individual workmen or substantial number of such workmen, held necessary for a union to represent workmen". In this ruling Supreme Court cases. The Bombay Union of Journalists *vs.* Hindu Bombay Workmen of M/s. Dharam Pal Prem Chand Sogandhi and of M/s. Western India Match Company Limited have been discussed and from the ratio of the judgement I find that it is necessary to discuss a demand in a meeting by substantial number of workmen and arrive at a decision by majority of them in the form of a resolution before making it an Industrial Dispute for its proper espousal. In the present case WW-1 has admitted that no such meeting was held whereas WW-3 stated that a meeting was held in the factory in which 55 workmen were present and WW-4 stated that the meeting was held outside the factory in which about 40 workmen were present but there was no writing of the proceedings.

In these circumstances, I hold that the workmen did not assemble in a meeting to discuss and espouse their demand. It was, therefore, not an Industrial Dispute without its espousal. These issues are decided against the workmen.

Issue No. 4 in reference No. 212 of 1979 and issue No. 1 in reference No. 178 of 1979.—The management placed on file Ex. M-5 to M-41 copies of stamp receipts of full and final accounts. It is in the receipts that the signatory workmen have left there right of reinstatement and reemployment. The full and final receipt of Shri Om Parkash Singh is Ex. M-39. Witnessed by Shri N.S. Rawat and Shri Hari Ram. According to it he received Rs. 812.66 by cheque number C/2^o/226931 drawn on Punjab and Sindh Bank, Faridabad, whereas Shri Jag Mohan Singh received Rs. 901.30 *vide* receipt Ex. M-41. It is witnessed by Shri Hari Ram. Out of the signatories of receipts WW-5 Shri Aditya Tiwari made a statement that he signed some papers under pressure of several persons of the management. In cross examination he stated that he did not file any complaint about his forced signatures. It was in a kothi in Sector 16-A during day time. He did not know the exact time. According to him the Director had physically taken him inside the office where he signed several papers. He did not report the matter to the police nor to the Labour Officer. He further stated that all others had received their full and final settlement except 19 workmen. In 1975 ILLJ page 235 in which it is held that:—

"The settlement covered all claims of workman whatsoever and did not leave any scope for any future dispute or claim to arise. The various subjects and topics of possible dispute were settled to mutual satisfaction. They include earned wages, leave, Gratuity, bonus, etc. It also stipulated that the workman would not be entitled to any further relief from the management. The result of the settlement is that all existing and potential disputes possible claims of the workman with the management in respect of his employment and termination of services had been put and end to, expressum facit cassare tactum. The bald statement of W.W.-5 cannot be relied upon that the workmen did not sign receipts of their own free will. Non appearance of signatories of full and final receipts shows that they all received the amount of their own will and settled their claims, therefore, I hold that Shri Jag Mohan Singh and Shri Om Parkash Singh in reference No. 212 of 1979 and 43 others workmen in reference No. 178 of 1979 have taken their full and final account from the management and they are estopped from raising any dispute.

Issue No. 5 in reference No. 212 of 1979 and reference issue in reference No. 178 of 1979.—M. W. 1 stated that on 26th September, 1978 power line of the factory bursted and workers were laid off. Lay off notices were displaced and sent to the Labour Commissioner, Haryana which were Ex. M-50 to M-56. There was a problem of furnace oil. Three letters were sent to the Manager, District, Indian Oil for its supply copies were Ex. M-57 to Ex. M-59. A draft of Rs. 10,000/- equal to value of one tanker of oil was sent but the same was received back as no supply of oil was made. Draft was then cancelled through the back *vide* letter copy Ex. M-60. Copy of letter of Indian Oil Corporation was Ex. M-61. He further stated that the management retrenched 19 workers left with them. Ex. M-62 to M-80 were retrenchment notices sent to workmen by registered post. Compensation was received by all workmen. Original money-order receipts and coupons were on sheets Ex. M-81 to M-86. The factory was re-opened in January 1979. Before the start of the factory recall notices by registered A.D. post were sent. Ex. M-87 was the form sent to the Secretary to Government, Haryana, Labour & Employment, Department, Haryana about retrenchment. Ex. M-88 was the re-opening notice. Ex. M-89 to M-107 were recall notices sent to the workmen by registered post. He further stated that the workers wanted continuity of service and not re-employment. Some of them did not come at all. None of them joined on re-employment condition. M/s. Forgewell was a different company. Ex. M-108 was a copy of registration certificate of M/s Forgewell (P) Ltd. from the Department of Industries, Haryana. Ex. M-109 was the photo copy of the bill for the various electrical fittings supplied by M/s. Ramin Enterprises Sadar Bazar, Delhi. In cross examination he stated that the Regd. office of Delhi Forging and Stampings (P) Ltd. was in Delhi. In Faridabad there was an accounts office in plot No. 63, Sector 16-A. He further stated that the retrenchment compensation was paid in full. He denied the suggestion that on 25th September, 1978 only a fuse went off due to short circuit. He also denied the suggestion that there was a fire in the factory and fire brigade had come on that day. He also denied the suggestion that incomplete work of this factory was got done by M/s. Forgewell (P) Ltd.

W.W. 2 stated that he worked in Delhi Forgings from November, 1975 to September, 1978. Thereafter he was under lay off. The management refused to get attendance marked in lay off register on 6th December, 1978. He received retrenchment compensation and wages on 1st January, 1979. On re-opening of the factory he was not called by the management for re-employment. He was the only fitter in the factory. Shri Ganesh Dutt his helper was doing the job of Fitter at present. Normally a fuse replacement required one hour but in 26th September, 1978 after line burst they were told to go home for 10 days and were laid off. M/s Delhi Forgings and Forgewell Company were owned by the same persons. He never refused to receive lay off or retrenchment compensation. WW-3 stated that lay off was from 26th September, 1978 to 6th December, 1978. After the settlement he had given application to the Managing Director. The machinery and equipment was transferred to Forgewell and production started there. He was not called to rejoin duty when work re-started. In cross examination he admitted his signatures on Ex. M-1. WW-4 stated that the management had called them back on duty after retrenchment but did not take him on duty. In cross examination he admitted his signatures on Ex. M-3. WW-1 stated that he drafted applications Ex. W-4 to W-28 and gave to the workmen for filing the same with the management. The management refused to accept and came out with a lay off. The matter was taken up with the labour authorities. After the lay off the management opened another factory M/s Forge Well (P) Ltd. In cross examination he stated that he had not visited M/s. Delhi Forging (P) Ltd. He admitted that M/s. Delhi Forgings and M/s. Forge Well (P) Ltd. were two distinct and separate entity and registered as different units under the Factories Act. He further stated that lay off in Delhi, Forgings commenced from 26th September, 1978 and continued upto 25th December, 1978. He also admitted as correct that retrenchment compensation and notice pay under section 25 (F) of the I.D. Act were sent to all the workmen who had not collected their full and final payment. He denied the suggestion that all the 20 workmen were called on work for re-employment. Only seven were called.

I have seen letter Ex. M-2 to M-4 from the S.D.O., Operation Sub Division, Ballabgarh in which the electric wiring has been shown as defective and dangerous to human life. Ex. M-50, M-53, M-56, M-56-A, M-55 and M-57-A are letters sent to the Labour Commissioner, Haryana under rule 74-A of the I.D. Rules. Ex. M-57 to M-59 are copies of letters sent to Indian Oil Corporation for furnace oil. Information about retrenchment was sent to the Secretary to Government of Haryana, Labour Department *vide* Ex. M-85. Money order coupons and receipts were pasted on sheets Ex. M-81 to M-86. The workmen were

retrenched on 21st December, 1978 under second proviso to section 25 (C) of the Industrial Disputes Act. The proviso is as under :—

"Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25-F at any time after the expiry of the first forty-five days of the lay off and when he does so, any compensation paid to the workmen for having been laid off during the preceding twelve months may be set off against the compensation payable for retrenchment".

I find that the management proceeded according to the law and rules in effecting lay off and then retrenched. The contention of the learned representative for the workmen that the lay off was a made up affair due to complaints Ex. W-4 to W-31 cannot be accepted because the S.D.O., Operation Sub Division, H.S.E.B., Ballabgarh had held the wiring of the factory defective and dangerous to human life in his letters Ex. M-2 to M-4. The management did its best to procure furnace oil from the Indian Oil Corporation and a demand draft number 033006/56 dated 12th September, 1978 for Rs. 10490.48 was sent,—*vide* Ex. M-60 and it is a matter of common knowledge that petroleum product remained in short supply in the country. The lay off thus was in the natural course of events. As far as retrenchment case, the management is empowered under section 25(C) of the I.D. Act to retrench laid off workmen after 45 days of lay off. I have seen notice Ex. M-88 that due to availability of furnace oil and power connection and rectification of defective lines the factory will be reopened from 5th January, 1979. Recall notices are Ex. M-89 to M-107 sent to individual workmen, postal receipts and undelivered letters in original attached with each notice. The version of the management that only some of the workmen came to the factory but refused to join duty on the condition of re-employment has force. I do not find any reasons to believe victimisation of the workmen and hold that the lay off was neither wrongful, nor illegal in reference issue in reference number 178 of 1979 and also hold issue No. 5 in reference No. 212 of 1979 in favour of the management.

While answering the reference, I give my award that the workmen are not entitled to any relief in both the references. I order accordingly.

Dated 8th May, 1981.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

Endst. No. 449, dated 12th May, 1981

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

ANNEXURE "A"

1. Shri Jawahar Lal
2. Shri Ram Yadi
3. Shri Adhya Tiwari
4. Shri Lalita Yadav
5. Shri Badri Nath
6. Shri Khilari Ram
7. Shri Suresh Nand
8. Shri Sita Ram
9. Shri Sir Pat
10. Shri Trilok Singh
11. Shri Shambhu Nath
12. Shri Kharban Chouhan
13. Shri Lallan Shah
14. Shri Ram Murat
15. Shri Hari Ram
16. Shri Mishri Lal
17. Shri Jagmohan Singh
18. Shri Ram Parshad
19. Shri Lal Chand
20. Shri Kalp Nath Singh
21. Shri Om Parkash Singh II

ANNEXURE "A"

List of members drawn from the management of M/s Delhi Forging and Stampings (P) Ltd., Sector-25, Faridabad.

Serial No.	Name	Membership No.	Designation	Date of enrolment
1.	Shri Kalp Nath Singh	9133	Maintenance Fitter	28-7-77
2.	Shri Badri Nath	9135	Helper	28-7-77
3.	Shri Mishri Lal	9412	Pressman	19-9-77
4.	Shri Ram Parshad	9413	Hammerman	19-9-77
5.	Shri Lal Chand	9414	Furnaceman	19-9-77
6.	Shri Jawahar Lal	9416	Doriman	19-9-77
7.	Shri Om Parkash Singh-II	9418	Furnaceman	19-9-77
8.	Shri Roop Chand	9429	Hammerman	19-9-77
9.	Shri Lalita Yadav	9421	Furnaceman	29-9-77
10.	Shri Adhya Tiwari	9443	Cutting Operator	29-9-77
11.	Shri Hari Ram	9444	Pressman	29-9-77
12.	Shri Bhim Singh	9445	Furnaceman	29-9-77
13.	Shri Kharban Chauhan	9465	Helper	12-10-77
14.	Shri Ram Pearey	9467	Helper	24-11-77
15.	Shri Upender Nath	9589	Grinder	24-11-77
16.	Shri Sita Ram	9591	Cutter	24-11-77
17.	Shri Taj Mohd.	9590	Doriman	24-11-77
18.	Shri Dal Bahadur	9592	Grinder	24-11-77
19.	Shri Brij Mohan Sharma	9593	Turner	24-11-77
20.	Shri Tirlokin Singh	9594	Inspector	24-11-77

1	2	3	4	5
21	Shri Partap Singh	9595	Shot Blasting Operator	24-11-77
22	Shri Sirpat	9596	Helper	24-11-77
23	Shri Sumer Singh	9597	Swipper	24-11-77
24	Shri Shambu Nath	9598	Helper	24-11-77
25	Shri Bans Raj	9599	Electrician	24-11-77
26	Shri Bani Parshad	9600	Grinder	24-11-77
27	Shri R. N. Vikraman	9601	Hammerman	24-11-77
28	Shri Baby Lal Salni	9619	Gardner	11-12-77
29	Shri Sureshnand	9620	Shaperman	11-12-77
30	Shri Lal Chand II	9622	Turner	11-12-77
31	Shri Ram Khijawan	9623	Saw Cutting Operator	11-12-77
32	Shri Ram Murat	9625	Helper	11-12-77
33	Shri Pearcey Lal	9626	Helper	11-12-77
34	Shri Ram Niddi	9627	Pressman	11-12-77
35	Shri Shiv Poojan	9628	Grinder	11-12-77
36	Shri Karan Singh	9634	Grinder	22-1-78
37	Shri Dinesh Chander	9754	Store Keeper	11-12-77
38	Shri Ram Bilas	9692	Helper	7-1-78
39	Shri Ramayan Tiwari	9756	Pressman	22-1-78
40	Shri Dhoop Singh	9757	Die maker by engraving	22-1-78
41	Shri Jagmohan Singh	9758	Helper	22-1-78
42	Shri Lallan Singh	9759	Grinder	22-1-78
43	Shri Jag Narain	9760	Furnaceman	22-1-78
44	Shri Raj Bahadur	9797	Furnaceman	19-2-78
45	Shri Ram Chander	9798	Helper	19-2-78
46	Shri Shiv Shanker	9801	Grinder	19-2-78
47	Shri Ravinderan	9802	Grinder	19-2-78
48	Shri Dev Singh	9804	Shaperman	19-2-78
49	Shri Chander Bali	9805	Die Maker (Engraving)	19-2-78
50	Shri Hitesh Kumar	9806	Milling	19-2-78
51	Shri Harish Chand	9807	Helper	19-2-78
52	Shri Jai Narain	9808	Shaperman-cum-Millingman	19-2-78
53	Shri Satvir Singh	9899	Helper	20-4-78
54	Shri Naval Singh	9900	Counting Clerk	20-4-78
55	Shri Ram Dhar Chauhan	9939	Helper	9-6-78
56	Shri Israil	9940	Helper	9-6-78
57	Shri Mohinder Singh	9941	Shaperman	9-6-78
58	Shri Gopal Tewari	9943	Helper	9-6-78
59	Shri Shiv Charan	9944	Helper	21-6-78
60	Shri Prabhu Dayal	10002	Turner	14-8-78
61	Shri Gian Chand Raheja	10004	Asstt. Foreman	14-8-78